

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CHARLES E. WINBORN, III AND)
W.T.W. ENTERPRISES, INC., INDIVIDUALLY)
AND ON BEHALF OF ALL OTHERS)
SIMILARLY SITUATED,)

Plaintiffs,)

v.)

Civil Action No. _____

PILOT CORPORATION: PILOT TRAVEL)
CENTERS, LLC AND PILOT FLYING J,)

Defendants.)

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiffs, Charles E. Winborn, III and W.T.W. Enterprises, Inc. ("Plaintiffs"), on behalf of themselves and all others similarly situated, allege as follows:

INTRODUCTION AND PARTIES

1. This is a civil action wherein Plaintiffs are seeking from Defendants Pilot Corporation, Pilot Travel Centers, LLC and Pilot Flying J ("Pilot" or "Defendants"), damages, restitution and disgorgement of all unlawfully gained profits received as a result of Defendants' wrongful taking of agreed upon diesel fuel rebates. Plaintiffs, bring this action for Defendants' breach of contract, conversion, unjust enrichment and violation of Tennessee's Consumer Protection Act.

2. Plaintiff Charles E. Winborn, III is an Alabama resident, resides in the Northern District of Alabama, is a customer of Pilot and does business in the state of Alabama. Plaintiff, and others similarly situated, entered into a contractual relationship with Defendants as consumers to be provided certain rebates for purchases of diesel fuel at agreed upon rebate

amounts. Plaintiff entered into this contractual agreement to purchase fuel from Pilot rather than purchasing diesel fuel from Pilot's competitors. Plaintiffs relied on this agreement and the stated rebate amounts in making diesel fuel purchases from Pilot.

3. Plaintiff W.T.W. Enterprises, Inc. is a corporation organized and doing business in the state of Alabama. Plaintiff and others similarly situated, entered into a contractual relationship with Defendants as consumers to be provided certain rebates for purchases of diesel fuel at agreed upon rebate amounts. Plaintiff entered into this contractual agreement to purchase fuel from Pilot rather than purchasing diesel fuel from Pilot's competitors. Plaintiffs relied on this agreement and the stated rebate amounts in making diesel fuel purchases from Pilot.

4. Defendant Pilot Corporation is a Tennessee corporation. It conducts business throughout the United States and operates as Pilot Travel Centers, LLC, and Pilot Flying J.

5. Defendant Pilot Travel Centers, LLC is a Delaware limited liability company and division of Pilot Corporation. It conducts business throughout the United States

6. Defendant Pilot Flying J is a Tennessee company and division of Pilot Corporation. It conducts business throughout the United States.

JURISDICTION AND VENUE

7. This court has original jurisdiction of this action under the Class Action Fairness Act of 2005. The amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and there is minimal diversity because certain members of the class are citizens of a different state than any Defendant, as required by 28 USC §1332(d)(2).

8. Venue as to Defendants is proper in this judicial district because Defendants conduct substantial business in this judicial district and certain acts complained of occurred in this judicial district.

FACTUAL BACKGROUND

9. Pilot is the largest travel center network in the United States, with over five-hundred fifty (550) locations operating under the Pilot and Flying J brands. Pilot is the largest seller of over the road diesel fuel in the country.

10. As a part of its diesel fuel sales program, Pilot entered into agreements with its customers throughout the country, including allowance for rebate payments and / or credits based on diesel fuel purchases by its customers. Plaintiffs, and other class members similarly situated, entered into such an agreement.

11. Pilot, through its owners, executives, sales agents, and administrative personnel, willfully devised a scheme to reduce the amount of rebate payments due and paid to Plaintiffs under this agreement, as well as others similarly situated. Through this scheme, which substantially increased Pilot's profits and employee's commissions, Pilot willfully, routinely and systematically underwrote and underpaid the rebate amounts owed to Plaintiffs, as well as others similarly situated.

12. The scheme was executed by agents and employees of Pilot through their manual reduction of the rebate amounts due to Plaintiffs, as well as others similarly situated.

13. All such actions were done by Pilot to the detriment of Plaintiffs, as well as others similarly situated, and without their knowledge or consent.

14. Based on information obtained from current and former employees involved in and, or a part of the scheme, the Federal Bureau of Investigation ("FBI") began an investigation of Pilot's unlawful activities in May of 2011. The affidavit of FBI special agent Robert Root, dated April 18, 2013, filed in support of a search warrant application obtained in the investigation, was recently unsealed by the United States District Court for the Eastern District

of Tennessee. The affidavit details the facts underlying the FBI's investigation, together with the names of various executives and employees of Pilot involved in the scheme. The sworn affidavit also describes how the scheme was planned and executed by Pilot. A copy of the investigator's sworn affidavit is attached hereto as "Exhibit A".

15. Under this fraudulent scheme, as alleged, Pilot contracted with numerous customers, including Plaintiffs, to provide a rebate program for all diesel fuel purchased at their travel centers throughout the country.

16. Under the terms of their rebate agreements, Plaintiffs and other customers similarly situated would receive their rebate amounts by check, either monthly or quarterly. For those customers to whom Pilot had extended credit for the purchase of diesel fuel (referred to as "direct bill" customers), they received a direct discount on their invoices for diesel fuel purchases.

17. Further, at Pilot's corporate sales seminars and meetings, Pilot's sales representatives and employees were instructed in how to engage in this scheme to reduce rebate payments. Sales representatives were also trained on how to target customers who could not or would not recognize any price or rebate discrepancies.

18. It was revealed through the FBI investigation that computer spreadsheets existed at Pilot's Corporate Headquarters, detailing amounts actually owed to customers for fuel rebates under their agreements with Pilot, as compared to what the customers were actually paid in reduced fuel rebates.

CLASS ACTION ALLEGATIONS

19. This action is brought on behalf of Plaintiffs, individually and as a class action, pursuant to Fed. R. Civ. P. 23 on behalf of all consumers nationally who have incurred reduced

diesel fuel rebate payments as a result of Defendants' unlawful scheme. The Class does not include Defendants, or their officers, directors, agents, or employees.

20. Specifically, Plaintiff seeks to represent the following class:

All Pilot customers who have been damaged by
Pilot's scheme to unlawfully reduce rebate payments
owed from diesel fuel purchases.

21. Plaintiff seeks to recover damages on a class-wide basis for themselves and the Class under the common law principals of contract law, including breach of contract, conversion, unjust enrichment and the Tennessee Consumer Protection Act of 1977.

22. The rights of each member of the Class were violated in the same fashion based upon Defendants' uniform actions.

23. This action has been brought and may be properly maintained as a class action for the following reasons:

24. **Numerosity:** Members of the Class are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believe, and on that basis allege, that the proposed Class contains thousands of members. The Class is therefore sufficiently numerous to make joinder impracticable, if not impossible. The precise number of Class members is unknown to Plaintiffs.

25. **Existence and Predominance of Common Questions of Fact and Law:** Common questions of law and fact exist as to all members of the Class. These questions predominate over any questions affecting individual Class members.

26. **Typicality:** Plaintiffs' claims are typical of the claims of the Class and since Plaintiffs were diesel fuel customers of Defendants as was each member of the Class. Furthermore, Plaintiffs and all members of the Class sustained monetary and economic injuries

arising out of Defendants' unlawful conduct. Plaintiffs are advancing the same claims and legal theories of behalf of themselves and all absent Class members.

27. **Adequacy:** Plaintiffs are an adequate representation of the Class because their interests do not conflict with the interests of the Class that they seek to represent; they have retained counsel competent and highly experienced in complex class action litigation; and they intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel. Plaintiffs claims, like those of the Class are antagonistic to Defendants.

28. **Superiority:** A class action is superior to other available means of fair and efficient adjudication of the claims of the Plaintiffs and members of the Class. The injuries suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' unlawful conduct. It would be virtually impossible for all members of the Class individually to effectively redress the wrongs done to them. Therefore, a class action is the only reasonable means by which Plaintiffs and the Class may pursue their claims. Moreover, even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

Breach of Contract

29. Plaintiffs individually and for the Class incorporates by reference all preceding Paragraphs, as though fully set forth herein.

30. Plaintiffs and the Class members had a contract with Defendants that was embodied by the account agreement documents. Under the agreement terms, Plaintiffs were entitled to receive specified rebate amounts based on the amount of diesel fuel purchased. Defendants breached this agreement by reducing Plaintiffs' rebate amount without the knowledge, consent or agreement of Plaintiffs.

31. Defendants were not, through contract or otherwise, authorized to engage in the practices described and complained of throughout this complaint. By engaging in such practices, and lowering rebate amounts paid, Defendants have breached their contract with Plaintiffs and the other Class members

32. As a result of Defendants' breach, Plaintiffs and the Class members have been damaged by being paid less than their agreed upon rebate amount.

SECOND CAUSE OF ACTION

Conversion

33. Plaintiffs individually and for the Class incorporates by reference all preceding Paragraphs, as though fully set forth herein.

34. Defendants, by reducing the agreed upon rebate amount, wrongfully converted consumer rebate money of Plaintiffs' for its own use.

35. As a result of this conversion of rebate money, Plaintiffs and Class members similarly situated have been damaged and are entitled to a return of the unlawfully converted funds from Defendants.

THIRD CAUSE OF ACTION

Unjust Enrichment

36. Plaintiffs individually and for the Class incorporates by reference all preceding Paragraphs, as though fully set forth herein.

37. Defendants have been, and continue to be, unjustly enriched, to the detriment of and at the expense of the Plaintiffs and Class members, as a result of their conduct directed against the Class as a whole and their resulting collection of money from the sale of diesel fuel.

38. Defendants have unjustly benefitted through the unfair or deceptive and thereby unlawful collection of money from the sale of diesel fuel, and continue to do so to their benefit and to the detriment and at the expense of Plaintiffs and Class members.

39. Accordingly, Defendants should not be allowed to retain the proceeds from the benefits conferred upon it by Plaintiffs and Class members, who seek disgorgement of Defendants' unjustly acquired profits and other monetary benefits resulting from its unfair or deceptive and thereby unlawful conduct, and seek restitution and/or rescission for the benefit of the Plaintiffs and Class members, in an equitable and efficient fashion to be determined by the Court.

40. Plaintiffs and Class members are entitled to the imposition of a constructive trust upon Defendants such that their enrichment, benefit and ill-gotten gains may be allocated and distributed equitably by the Court to and/or for the benefit of Plaintiffs and Class members.

FOURTH CAUSE OF ACTION
Violation of Tennessee Consumer Protection Act of 1977

41. Plaintiffs individually and for the Class incorporates by reference all preceding Paragraphs, as though fully set forth herein.

42. Tennessee Code § 47-18-104, prohibits unfair or deceptive acts. Specifically, Tenn. Code § 47-18-104(b)(11) declares that conduct is unfair or deceptive and thereby unlawful and in violation of the TCPA if it involves "[m]aking false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions."

43. In engaging in the conduct described herein, as more specifically set forth in Paragraphs 7 – 18, above and “Exhibit A” to this Complaint, Defendants violated the TCPA.

44. Defendants’ misconduct was willful or a knowing violation of this statute.

45. Were it not for the misconduct of Defendants, Plaintiffs and the Class would not have purchased fuel from Defendants at the price paid to the Defendants.

46. Plaintiffs and members of the Class have suffered and will continue to suffer injury in fact and suffer damages as a direct result of Defendants’ unfair or deceptive trade practice, in that each has expended money to purchase fuel from Defendants at a price that was higher.

47. As a result of the violations of the TCPA engaged in by Defendants, the Plaintiffs and Class is entitled to injunctive relief, monetary, treble damages, and punitive damages, and an award of attorneys’ fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, prays for relief as follows:

A. For an order certifying a National Class, and appointing Plaintiffs and their counsel to represent the Class;

B. Alternatively, if the Court does not grant certification of a National Class, Plaintiffs prays for an order certifying an Alabama Class, and appointing Plaintiffs and their counsel to represent the Class;

C. For an order awarding Plaintiffs and the Class restitution and/or disgorgement and other equitable relief as the Court deems proper;

D. For an order awarding Plaintiffs and the Class compensatory and punitive damages, as well as treble damages, as to the appropriate causes of action;

E. For an order enjoining Defendants, from continuing to engage in business acts and practices, or any of them, which are unlawful, unfair, or fraudulent, as alleged herein; and

F. For an order awarding Plaintiffs and the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees and expert-witness fees and other costs as may be applicable; and

G. For an order awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury of all claims asserted in this Complaint.

Dated: April 24th, 2013

Respectfully submitted,

/s/ F. Jerome Tapley

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